

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
(OWENS, P.J., and CAVANAGH and NEFF, JJ.)

CITY OF MOUNT PLEASANT,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

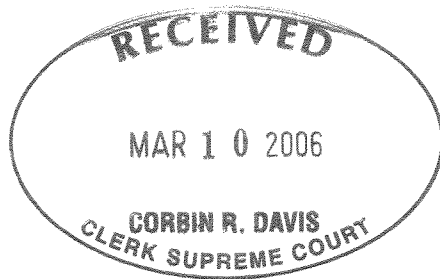
Respondent-Appellee.

Supreme Court No. 129453

Court of Appeals No. 253744

Michigan Tax Tribunal
No. 00-191496

**BRIEF ON APPEAL - AMICUS CURIAE BRIEF OF WAYNE COUNTY
IN SUPPORT OF CITY OF MOUNT PLEASANT**



EDWARD M. THOMAS (P 21371)
Wayne County Corporation Counsel
ROBERT S. GAZALL (P 41350)
Chief Assistant Corporation Counsel
JEANNE D'ARC HANNA (P 63066)
Assistant Corporation Counsel
Attorneys for Amicus Curiae Wayne County
400 Monroe, Suite 660
Detroit, Michigan 48226
(313) 224-5030

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ORAL ARGUMENT REQUESTED

EDWARD M. THOMAS (P 21371)
Wayne County Corporation Counsel
ROBERT S. GAZALL (P 41350)
Chief Assistant Corporation Counsel
JEANNE D'ARC HANNA (P 63066)
Assistant Corporation Counsel
Attorneys for Amicus Curiae Wayne County
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Detroit, Michigan 48226
(313) 224-5030

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JURISDICTIONAL STATEMENT

Amicus Curiae Wayne County accepts the Statement Regarding Appellate Jurisdiction of Petitioner-Appellant. More specifically, Wayne County has a direct interest in the legal principles involved and in the outcome of this matter pursuant to MCR 7.302(B)(2).

QUESTIONS PRESENTED FOR REVIEW

- I. WHETHER A LOCAL GOVERNMENT'S ACQUISITION OF LAND IN PURSUIT OF ECONOMIC DEVELOPMENT CONSTITUTES A PUBLIC PURPOSE AND IS THEREFORE EXEMPT FROM AN AD VALOREM TAX UNDER MCL § 211.7m?

- II. WHETHER THERE MUST BE A PRESENT PHYSICAL USE OF THE PROPERTY IN ORDER TO CREATE THE RIGHT TO AN EXEMPTION FROM AN AD VALOREM TAX UNDER MCL § 211.7m?

STATEMENT OF FACTS

Amicus Curiae Wayne County accepts the facts presented by Petitioner-Appellant.

ARGUMENT

I

STANDARD OF REVIEW

The Court of Appeals committed an error of law and adopted the wrong principles in its analysis. Petitioner-Appellant's appeal involves issues of statutory interpretation that are reviewed de novo. *Inter Coop Council v Dep't of Treasury*, 257 Mich App 219, 222; 668 NW2d 181 (2003). And in interpreting the statute, it is the clear and unambiguous language of the statute that must be followed. *City of Lansing v Lansing Twp*, 356 Mich 641, 649; 97 NW2d 804 (1959).

II

MCL § 211.7m IS CLEAR AND UNAMBIGUOUS, THEREFORE IT WAS IMPROPER FOR THE COURT OF APPEALS TO GO BEYOND MICHIGAN LAW TO INTERPRET THE STATUTE

A. INTERPRETING THE LANGUAGE OF THE STATUTE

Based on the language of MCL § 211.7m, there can be no dispute that the property must be used for a public purpose in order to be exempt from taxation.

MCL § 211.7m reads, in pertinent part, as follows:

Property owned by, or being acquired [by] ... a county, township, city, village, or school district used for public purposes ... is exempt from taxation under this act.

This Court made clear that “[i]n general, tax exempt statutes must be strictly construed in favor of the taxing authority. However, this rule does not mean that we should give a strained construction which is adverse to the Legislature’s intent.” *Michigan United Conservation Clubs v Township of Lansing*, 423 Mich. 661, 664-665, 378 N.W.2d 737 (1985); and *City of Ann Arbor v The University Cellar, Inc.*, 401 Mich. 279, 288-289, 258 N.W.2d 1 (1977). Therefore, it is important to give careful consideration to the actual language used in the statute.

The legislature’s decision to use the phrase “public purposes” as opposed to “public use” is of notable significance. The impact of this is best demonstrated when considering the meaning of public purpose with respect to condemnation proceedings. In *County of Wayne v Hathcock*, 471

Mich. 445; 684 N.W.2d 765 (2004), this Court examined the parameters of the term public purpose within MCL § 213.23. In so doing, this Court essentially found that “MCL § 213.23 must conform to the ‘public use’ limitation of Const. 1963, art. 10, § 2.” (*Hathcock* at p 486) In contrast, no such limitation exists with respect to MCL § 211.7m. The deliberate use of the legal term “public purpose” in the tax context implies that the legislature chose a broader, less restrictive power under the tax provisions, which incorporates exemptions.

It is equally significant that the language of MCL § 211.7m contemplates the very factual scenario before this Court when it qualifies the real estate exemptions as the “property owned or being acquired.” The legislature in effect acknowledges the natural progression that acquiring the land is a necessary step to owning the land. There is no need to infer what the language expressly states, that property “being acquired” for a public purpose also qualifies for the tax exemption.

To continue with this analysis, the next likely deliberation is whether the use of the subject property is for a present or future public purpose. Once again, it is crucial to consider this within the context of the statute. Since this Court decided in *Hathcock* that economic development is a public purpose, the logical extension implies that the acquisition itself, as clearly expressed and permitted in MCL § 211.7m, of such property that is necessary to preserve the public purpose and proceed with economic development would thereby qualify the government owned property for an exemption from *ad valorem* taxes. (*Id.* p 461-462) There is nothing prospective about the present act of acquiring the land, particularly when the intent of such acquisition is for the purposes of economic development, just as there is nothing prospective about owning the land. In other words, the actual pursuit of such ends (by way of acquiring, assembling, and marketing land) by a governmental entity constitutes a public purpose.

B. THE COURT OF APPEALS ERRED IN RELYING ON KANSAS LAW

The parties in this action agree that the legal terms “public use” and “public purpose” are not synonymous, and that MCL § 211.7m deals with the latter of the two. Yet the Court of Appeals decision completely overlooked that distinction in relying on *In re City of Wichita*, 255 Kan. 838, 877 P.2d 437 (Kan 1994) to define “use.” As cited in *In re City of Wichita*, the Kansas statute, provides in pertinent part:

“The following described property ... shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

....

“*Second.* All property **used exclusively** (emphasis added) by the state or any municipality or political subdivision of the state. All property owned ... by ... any municipality ... which is used or is to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be ‘used exclusively’ by the ... municipality ... for the purpose of this section.” (*Id.* p 839)

The statute in *Wichita* requires exclusive use of a property, which the Kansas Court equates to “actual use.” (*Id.* p 840) The Kansas Court, in interpreting “public use,” and relying entirely on *Tri-County Public Airport Authority v Board of Morris County Commissioners*, 245 Kan. 301; 777 p.2d 843 (1989), uses this rationale in determining that mere acquisition of property is not actual use. The *Wichita* case can be distinguished on three grounds: (1) the Kansas statute is far more restrictive than the Michigan statute, to the extent that applying the court’s rationale here is simply not conducive, (2) the Kansas Court interprets “public use” whereas the Michigan tax exemption statute here addresses “public purpose,” and (3) because the factual circumstances between *Wichita* and *Mt. Pleasant* are unrelated, and applicable Michigan law has already decided that economic development qualifies as a public purpose, there is no reason to reach out to Kansas law for clarification.

C. TO THE EXTENT THIS COURT DEEMS IT NECESSARY TO GO BEYOND THE PLAIN LANGUAGE OF THE STATUTE, THIS COURT SHOULD LOOK TO OHIO LAW FOR A MORE APPLICABLE AND RELEVANT INTERPRETATION

An alternative interpretation, and persuasive authority, which arrives at the same conclusion is the rationale used by the Ohio Supreme Court. The Ohio Revised Code, Section 5709.08 - Exemption of Government and Public Property, in pertinent part, states as follows:

Real or personal property belonging to the state or United States used exclusively for a public purpose, ... shall be exempt from taxation.

The Ohio Supreme Court has repeatedly found that property held for future governmental purposes is exempt from taxation, even though there is no present actual use of the property by the public. *Carney v. Cleveland City School District Public Library*, 169 Ohio St. 65; 157 N.E.2d 311 (1959). The *Carney* court began its analysis considering the reasons for tax exemptions: “The entities to which tax exemptions have been granted, whether governmental or non governmental in character, are such as are being operated for the benefit of the public. Where the entity is governmental in character and is supported and maintained from the public revenues, no public benefit would result from a taxation of its property.” (*Id.* p 66) The *Carney* court reasoned that the basic purpose of tax exemption provisions “is to allow certain entities which are operated for the public benefit to devote their funds entirely to that use without diminution by way of taxation.” (*Id.* p 67) In contemplating the standards required when interpreting a statute, the court noted that “strict construction must be tempered with reason.” (*Id.* p 67)

In determining that present or actual physical use is not essential to give rise to the exemption, the *Carney* court stated:

It is a matter of common knowledge that, even though property is acquired for an intended use, actual physical occupancy cannot begin immediately. Even where, as in the present case, there is an existing physical structure, there are usually certain structural changes necessary to make it fit the needs of the purchaser. Granting the availability of funds, plans must be prepared, bids let and the actual construction work take place. All these preparations consume time during which actual physical use cannot begin.

In instances where a structure must be built before an actual physical use can begin, in addition to the preparation of plans, the letting of bids and the actual construction, quite frequently it is necessary to procure funds, either by appropriation, the selling of bonds by a governmental entity or, in the case of nongovernmental entities, by voluntary contributions. All these matters necessarily consume time during which there can be no actual physical use. (*Id.* p 67, 68)

Furthermore, the *Carney* court concluded:

It is unrealistic to differentiate between those instances where the property acquired for an intended public use is under construction and where the construction has not yet begun.

It is the purpose and intent of the tax-exemption statutes with which we are concerned that the funds of the exempt entity be devoted exclusively to the benefit of the public for that particular use, and to so differentiate and deny an exemption to property acquired for such use but not presently so used would defeat the purpose of the exemption statutes.

Thus, where an entity, which under the law is entitled to have its property exempted from taxation, acquires real property with the intention of devoting it to a use exempting it from taxation, such property is entitled to be exempted from taxation, ... even though actual physical use of the property for the exempt purpose has not yet begun.

In other words, **it is not necessary that actual physical use of the property for an exempt purpose be commenced before it is entitled to be exempted from taxation.** (emphasis added) It is sufficient if it is acquired by the organization entitled to the exemption, with the intention of devoting it to an exempt use. (*Id.* p 68, 69)

The Ohio Supreme Court also addressed a similar issue where real property was acquired with the intent of devoting it to a *specified use*, as required by its statute, which would exempt it from taxation. *Board of County Commissioners of Lake County v. Supanick*, 32 Ohio St. 45; 289 N.E.2d 902 (1972). In that case, the county commissioners acquired the vacant land for the purposes of constructing a hospital. Feasibility studies and other financing options were underway, however, two bond issues had been voted down by the electorate, thereby halting the project. (*Id.* p 45) The Ohio Supreme Court held that,

...where a board of county commissioners acquires real property with the ultimate purpose of devoting it to a specified use which would exempt it from taxation, such property is entitled to be exempted from taxation until such time as the ultimate purpose has been abandoned, or efforts to realize the ultimate have ceased, or the property has been put to a use which would not qualify it for an exemption, even though actual physical use of the property for the intended exempt purpose has not yet begun. (*Id.* p 47)

Application of the rationale used by the Ohio Supreme Court to the facts in the *Mt. Pleasant* case would result in a reversal of the Court of Appeals decision. MCL § 211.7m Allows for a tax exemption for property “used for public purposes.” This Court decided in *Hathcock* that economic development is a public purpose. In acquiring the real property in this case, *Mt. Pleasant* intended to use this property for economic development which is evidenced by the completion of an urban area traffic master plan, a housing market study, and the annexation of vacant land adjacent to its boundaries. This bona fide intent to use the property for the purposes of economic development qualifies the property for exemption.

Furthermore, in the case of *City of Traverse City v Township of East Bay*, 190 Mich. 327; 157 N.W. 85 (1916), despite the fact that the Michigan Supreme Court found that “the lands not only

[were] not used for any public purpose, but that they [were] not used for any purpose,” the Court still rendered an opinion regarding present versus prospective use. (*Traverse City* at p 330) The Court held that “the use which warrants exemption mentioned in the statute is a present use, and not an indefinite prospective use.” (*Id.* p 331) This rationale defeats the purpose of the exemption statute MCL § 211.7m.

III

WAYNE COUNTY HAS SIGNIFICANT INTEREST IN THE ISSUE PRESENTED

A. *HATHCOCK* : BRIEF HISTORY AND APPLICATION

As this Court is aware, its recent decision in *Hathcock* reasoned that the acquisition of land by Wayne County for the expressed economic development goals was for a public purpose. Wayne County’s Pinnacle Project was a good faith attempt to place property into a more productive, tax generating use with the development of a large business and technology park to include hotels, offices, shopping and dining areas, and a recreational facility. Wayne County received a grant from the Federal Aviation Administration (“FAA”) to be used to purchase surrounding properties that would be affected by the increased noise ratings (as a result of the Metro Airport expansion). Wayne County agreed to utilize these properties for an economically productive use and began to assemble a checkerboard of properties as a means to achieve this goal. In order to make good on its

commitment to the FAA to place the properties into productive use, and after exhausting available alternatives, Wayne County served condemnation complaints on the remaining 20 properties.

In *Hathcock*, this Court determined that economic development qualified as a public purpose in relation to the powers of eminent domain. This Court stated that as a home rule charter county,

Wayne County has condemned the defendants' real properties for the following purposes: "(1) the creation of jobs for its citizens, (2) the stimulation of private investment and redevelopment in the county to insure a healthy and growing tax base so that the county can fund and deliver critical public services, (3) stemming the tide of disinvestment and population loss, and (4) supporting development opportunities which would otherwise remain unrealized." The analysis provided in this opinion demonstrates that, . . . any condemnation in furtherance of these goals is "within the scope of Wayne County's powers," as required by MCL 213.23. (*Id.*, p 461-462)

As a logical and natural extension of this rationale, and in dealing with a legislative act far less restrictive than the condemnation statute considered in *Hathcock*, it is appropriate then that the acquisition and assemblage of land by a municipality in pursuit of economic development for a public purpose satisfies MCL § 211.7m.

B. IMPACT ON WAYNE COUNTY

The issue in this *Mt. Pleasant* case is whether the property assembled by the city is being "used for public purposes" qualifying it for a tax exemption under MCL § 211.7m. A resolution of this issue along with definitive guidelines as to the parameters of such tax exemption is of significant importance to Wayne County as well as many other similarly situated communities throughout the state.

Contrary to this Court's analysis in *Hathcock*, the Court of Appeals has determined that activities such as the acquisition, assemblage, and marketing of land for economic development is not a use for a public purpose. (*City of Mt. Pleasant v State Tax Comm*, slip op, p 5). Such a holding

has a profound impact on Wayne County's economic and business development initiatives. As a result of the inherent tension created by the Court of Appeals decision in *Mt. Pleasant* and this Court's decision in *Hathcock*, municipalities and political subdivisions such as Wayne County are left with a cloud of uncertainty. Without proper clarification and guidance by this Court, municipalities may need to abandon their pro-active approach in seeking out economic development initiatives aimed at revitalizing communities. In this current conflict, it would be unduly burdensome for a municipality to embark on necessary and ambitious initiatives to transform its aged and decaying streets and neighborhoods, to return property to a productive, tax generating use, to create hundreds of thousands of jobs, to accelerate economic growth, and to serve as a catalyst for development, all while expending funds in the interim and bearing the added financial costs and burden of an *ad valorem* tax, in pursuit of (by acquiring and assembling land) economic development.

CONCLUSION

This Court decided in *Hathcock* that economic development is a public purpose. Like Wayne County in the *Hathcock* case, Mt. Pleasant had definite plans for the property. Like the *Hathcock* case, Mt. Pleasant took active steps in acquiring and assembling land for a public purpose. Like the *Hathcock* case, Mt. Pleasant engaged in these activities with the same objective of economic development. The Court of Appeals decision and rationale is not in harmony with this Court's decision in *Hathcock*.

The Michigan Court of Appeals erred in its statutory interpretation of MCL § 211.7m. Wayne County has a direct interest in the outcome of this matter and seeks statutory clarification and definitive guidelines for *ad valorem* tax exemptions for governmental entities under MCL § 211.7m.

RELIEF

Amicus Curiae Wayne County respectfully requests this Court reverse the Court of Appeals and the Michigan Tax Tribunal, and hold that the disputed parcels are exempt from taxation under MCL § 211.7m. Furthermore, Wayne County respectfully requests that this Court overturn the precedent set in *Traverse City v. East Bay Township*.

Respectfully submitted,

EDWARD M. THOMAS
Wayne County Corporation Counsel

By:



ROBERT S. GAZALL (P 41350)
Chief Assistant Corporation Counsel
JEANNE D'ARC HANNA (P 63066)
Assistant Corporation Counsel
Attorneys for Amicus Curiae Wayne County
400 Monroe, Suite 660
Detroit, Michigan 48226
(313) 224-5030

Date: March 10, 2006